

BOARD OF APPEALS CASE NO. 003

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BEFORE THE

APPLICANT: William A. Gibson, T/A
Gibson's Service Station

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ZONING HEARING EXAMINER

REQUEST: Rezone 1.87 acres from
B1 to B3; 2457 Conowingo Road, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: January 2, 1985 and
March 6, 1985

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Aegis: 11/21/84 & 11/29/84

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Record: 11/21/84 & 11/28/84

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ZONING HEARING EXAMINER'S DECISION

The owners of the business and of the subject parcel are Mr. and Mrs. William Gibson. The Applicants are requesting a reclassification of 1.87 acres from the B1 classification to the B3 classification.

The subject parcel is located at 2457 Conowingo Road in the Third Election District. The parcel contains 1.87 acres, more or less, all of which is presently zoned B1.

Mr. Robert Lynch, Director of the Department of Planning and Zoning, was called as a witness by the Applicant. Mr. Lynch said that prior to the adoption of the 1982 Comprehensive Rezoning in September 1982, the 1957 Zoning Ordinance permitted filling stations and minor repair garages in the B1 District. Mr. Lynch went on to testify that following the 1982 Comprehensive Rezoning, the zoning on the subject property remained B1. The new Zoning Code permits filling stations and repair shops as a Special Exception in a B1 District, which requires Board of Appeals approval. Therefore, Mr. Lynch concluded that the Applicant's use has become non-conforming and any expansion would require Board of Appeals approval.

Mr. Lynch went on to testify that today's B1 zoning limits the present use more than the old B1 zoning under the 1957 Ordinance. The zoning district in which motor vehicle filling and service stations is first permitted by right and not subject to Special Exception status is the B2 District. Mr. Lynch concluded by saying it was his opinion that the staff should have dealt with the problem in the 1982 Comprehensive Rezoning in that the subject parcel was left in the B1 classification, but the Zoning Code upgraded the uses to a B2 use. The witness said that a use more intense than B2 would be undesirable, since it would conflict with the Master Plan and go beyond local services envisioned for the area.

Mr. William A. Gibson appeared and testified that he trades as Gibson's Service Station, and has been at the subject location since 1966. He said that from 1957 to 1965, he operated a similar business at the intersection of MD Route 543 and U.S. Route 1. Mr. Gibson said he relocated his business on the subject parcel because the State Highway Administration was considering relocating Route 1 in the mid 1960's. The witness said that he does repair work on cars, pickups, farm tractors, buses, and trucks, although he does not do heavy truck repairs. Mr. Gibson said he also has cars stored behind the service station which he uses for parts and that he occasionally sells used cars at the location. The witness said he has three bays; the first one is 15 feet deep; the second bay is 30-35 feet deep; and the third bay, which is 45 feet deep, is used for trucks and buses. Mr. Gibson further testified that prior to 1982, he also pumped gas at the location but, because of a dispute with the Sun Oil Company, he is not currently pumping gas; however, he did not rule out the possibility that the gas pumps will be activated in the future.

Mr. Denis Canavan appeared and qualified as an expert in matters of zoning and land planning. Mr. Canavan established the neighborhood of the subject parcel, extending from MD Route 543 on the south, to MD Route 136 on the north, and a two-mile distance measured on either side of U.S. Route 1. The witness said MD Route 136 and MD Route 543 are two major arterials within the County highway system. He said these roads provide direct linkage from the northern, rural reaches of Harford County to the areas in the expanding residential and commercial development envelope of the County. Mr. Canavan went on to testify that there are no major roads or natural stream valleys or ridge lines to distinguish a distinct east-west neighborhood boundary; therefore, he selected a two-mile distance from either side of U.S. Route 1.

Mr. Canavan additionally testified that the Applicant had rented commercial space and maintained a full-service gasoline station at the intersection of U.S. Route 1 and MD Route 543 prior to 1965 when the zoning of the parcel was B3. The Applicant moved his business in 1965 to its present location and that the zoning classification at the time was B1. A combination of factors have influenced the Applicant's operation such as increase in "gas and go" operations and a decrease in full-service stations that provide repair work. As a result, over the years the Applicant's operation has moved from a full-service gasoline station to a repair facility. Further, Mr. Canavan testified that over the years the property's front and side yards have been used for temporary storage of vehicles to be serviced, and the use of the rear yard for storage of parts and equipment that could be used for repair work.

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Mr. Canavan went on to testify that the initial error was the placement of the subject property in the B1 zone when the County reviewed the location of business districts on the various zoning maps. At the time of the review, the property should have been placed in the appropriate B3 zone, as were other businesses of a similar nature, according to Mr. Canavan's opinion. Mr. Canavan further testified the error was compounded when the Zoning Code was adopted, since it changed the standard of the B1 zone and made Mr. Gibson's existing use non-conforming. As an example, Mr. Canavan pointed out that within the business district regulations of the Code, subsection f., entitled "Use Limitations", subsection (2), titled "Storage Restrictions", reads in part:

"Outside storage of material or equipment shall not be permitted in the B1 and B2 Districts. Outside storage shall be permitted in the B3 district provided such storage does not cover more than thirty-five (35) percent of the lot area and shall not be within the required front yard."

Mr. Canavan argued that clearly the language would limit the existence of the Applicant's business because he would not be allowed to continue the outdoor storage of parts and equipment in the rear yard. As such, Mr. Canavan said the present operation would be placed in a non-conforming status since it does not comply with the standards for the uses permitted within the B1 or B2 district. He further said that the first zone that would permit the use is the B3 zone. He further said placement of this property and the use in the B3 zone is consistent with other similar uses that are found within and outside the described neighborhood.

The Staff Report of December 28, 1984 recommends approval of a B2 classification, based on the criteria of Council Bill 84-37, and recommends denial of a B3 classification. The Department of Planning and Zoning filed an amended Staff Report dated March 6, 1985, in which the Staff identified the immediate neighborhood as an area generally served by the existing use. The Department said that the neighborhood would be limited to an area of Ruffs Mill Road to the south, White House Road to the north, Gibson Manor to the east, and Coffman subdivision on Sandy Hook Road to the west. The amended Staff Report again recommends approval of the B2 classification, and denial of the B3 classification.

Mr. and Mrs. Charles Stetler appeared and testified that they own property which adjoins the side and rear of the subject parcel, and further, that Mrs. Stetler's mother owns property which adjoins the subject parcel. Both Mr. and Mrs. Stetler felt that granting of the B3 classification would adversely impact the value of their property and, further, that they would be faced with dealing with the B3 uses which would be permitted on the property. On cross-examination,

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the Stetler's did admit that there was a row of pine trees on the subject parcel, which partially screens the parcel from their property.

CONCLUSION:

In order to receive a zoning reclassification, the burden of proof is on the Applicant to show a substantial change in the character of the neighborhood, since the last comprehensive rezoning or, in the alternative, a mistake in the comprehensive rezoning itself.

Dealing with substantial change in the neighborhood, the Applicant must demonstrate the neighborhood of the subject parcel and then, after defining the neighborhood, the Applicant must set forth the changes which have occurred within the neighborhood. In the testimony of the Applicant's expert witness, he defined the neighborhood of the subject parcel as being MD Route 136 on the north, MD Route 543 on the south, and a two-mile distance measured on either side of U.S. Route 1, which bisects the full length of the neighborhood. The Applicants, however, have failed to set forth what changes, if any, have occurred in the neighborhood since the 1982 Comprehensive Rezoning. Since the Applicants have failed to demonstrate substantial change in the character of the neighborhood, we must now determine whether a mistake was made in the 1982 Comprehensive Rezoning pertaining to the subject parcel.

The Applicants, through the testimony of their expert witness, Denis Canavan, argue that the 1982 Comprehensive Rezoning failed to recognize the uses which existed on the subject parcel when the Comprehensive Rezoning was approved in 1982. He points out that the most of the uses were permitted in the B1 zone prior to the 1982 Comprehensive Rezoning, but that as a result of the Comprehensive Rezoning, the Applicant's use of the parcel has become non-conforming; therefore, it was a mistake not to place a B3 classification on the subject parcel.

The testimony of Robert Lynch, the Planning Director, and the Staff Report of December 28, 1984, acknowledges the fact that the 1982 Comprehensive Rezoning permits filling stations and repair shops in the B1 district as Special Exceptions requiring Board of Appeals approval. Consequently, the Applicant's use has become non-conforming, and any expansion would also require Board of Appeals approval. Although Mr. Lynch did not testify that a mistake did in fact occur, he acknowledged that the Applicant's operation has become non-conforming and that some of the uses currently on the parcel are first permitted in a B3 district, although Mr. Lynch and the Staff Report both recommend a B2 classification.

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Council Bill No. 84-38, effective September 17, 1984, was adopted to provide relief to property owners who find themselves in a similiar position as the Applicant in this case. The Bill amends Section 25-3.6 of the Zoning Code, and the operative language of subsection (b)(4), "Criteria for Reclassification", states:

"a. Harford County did not take notice, during the Comprehensive Rezoning, of the existence of a legal use on the property prior to recommending a zoning classification which would limit the existing use or uses on the property. In such event, the Board of Appeals may grant a reclassification of the property so as to restore the property to a zoning classification most consistent with the use or uses prior to the Comprehensive Rezoning change . . ."

Therefore, it is the finding of the Hearing Examiner that a mistake, in fact, did occur, since although the zoning of the subject parcel remained B1, the uses permitted in the B1 district were substantially changed so that the Applicant's use became non-conforming. It is the recommendation of the Hearing Examiner that the Applicant's request for a reclassification from B1 to B3 be granted.

Date May 7, 1985

L. A. Hinderhofer
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Zoning Hearing Examiner